



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-3763-2018 (O&M)

Reserved on: 20.05.2024

Pronounced on: 24.05.2024

Manpreet Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

PRESENT: Mr. Kanwaljit Singh, Senior Advocate with
Mr. C.S. Rana, Advocate for the petitioner.

Ms. Aakanksha Gupta, AAG, Punjab.

Mr. Liaqat Ali, Advocate for respondent No. 2.

NIDHI GUPTA, J.

1. Prayer in the present revision petition is for setting aside the order dated 17.11.2016 passed by the learned trial Court, whereby the petitioner has been charge-sheeted to face trial under Sections 376, 506 and 354 IPC, in a case arising out of FIR No. 8 dated 15.01.2015 (Annexure P-1) registered under Sections 376, 354 and 506 IPC at Police Station Meharban, District Ludhaina.

2. Learned Senior Counsel for the petitioner, *inter alia*, submits that the impugned order of charge dated 17.11.2016 is on the face of it unsustainable, as the proceedings before the learned trial Court had been stayed by this Court vide order dated 10.11.2016 passed in a CRM-M-38465-2016 filed by the petitioner seeking quashing of the present FIR. It is submitted that accordingly, in view of the stay granted by this Court on



10.11.2016, the learned trial Court could not have proceeded to frame charges against the petitioner on 17.11.2016.

3. Learned Senior Counsel further submits that notice in the aforesaid CRM-M-38465-2016 was issued on 26.10.2016; whereupon stay was granted on 10.11.2016 in the presence of both the parties. As such it cannot be pleaded by respondent No. 2-complainant that she did not have knowledge of the stay order. It is further pointed out that the said quashing petition was later dismissed by a co-ordinate Bench of this Court vide order dated 09.10.2018 (Annexure P-5).

4. Learned Senior Counsel for the petitioner further submits that in actual fact, the petitioner and complainant/respondent No. 2 herein were in a consensual relationship. At the time of alleged occurrence, the victim/respondent No. 2 herein was 24 years of age. The parents of both the parties and infact the entire village knew about their relationship. There were even talks of marriage between the petitioner and respondent No. 2-complainant. However, the parents of respondent No. 2 had fixed her marriage with another boy, who ultimately backed out. It is contended that it is only after the cancellation of the other alliance with the other boy that the present FIR came to be registered against the petitioner. It is argued that accordingly, the allegations of rape as alleged in the FIR are not made out and are utterly false and fabricated. Moreover, the alleged victim/respondent No. 2 is now married and happily settled in her matrimonial home.

5. Learned Senior Counsel for the petitioner contends that in actual fact the sequence of events was that the complainant side had



visited the petitioner's house on Lohri on 13.01.2015; where upon they had proceeded to create a ruckus, after dragging out the petitioner from his room into the courtyard. Accordingly, the petitioner had lodged a case bearing FIR No. 10 dated 17.01.2015 (Annexure P-10) registered under Sections 323, 427, 451, 506 and 148 read with Section 149 IPC at Police Station Meharban, Ludhiana. After facing trial, the complainant-side has been convicted and sentenced to undergo rigorous imprisonment for three years vide judgment of conviction and order sentence dated 13.11.2019 passed by the learned Judicial Magistrate 1st Class, Ludhiana. The appeal of the complainant-side against the aforesaid judgment is pending adjudication before the Sessions Court at Ludhiana.

6. It is further contended by learned Senior Counsel for the petitioner that even as per MLR dated 16.01.2015 (Annexure P-2), there were no external marks of injury on the person of the complainant.

7. It is submitted that the petitioner had also filed a petition bearing CRM-M-27609-2015 (Annexure P-4) with the prayer that the representation filed on behalf of the petitioner by his brother, be decided; and further prayer was made that the petitioner be subjected to Narco, Polygraph and Brain Mapping Test to ascertain the truth on the allegations levelled in the FIR. However, vide order dated 09.10.2018 (Annexure P-4) the said petition was dismissed by a co-ordinate Bench of this Court.

8. Learned Senior Counsel for the petitioner further contends that even as per the Chemical Examiner Report dated 21.07.2015 (Annexure P-7), *'No Spermatozoa were detected in the contents of*



exhibits I'. Thus, it is accordingly prayed that in view of the peculiar facts and circumstances, the present petition be allowed, and the matter be remanded back to the learned trial Court for framing of charges in view of the facts and submissions made here in above.

9. Learned counsel for the State assisted by learned counsel for respondent No. 2-complainant vehemently opposed the submissions made by learned Senior Counsel for the petitioner and submitted that perusal of the *zimni* orders (Annexure P-8) dated 17.11.2016 and 07.12.2016, shows that irregularity, if any, on the part of learned trial Court was inadvertent. It is submitted that on 17.11.2016, the order of this Court dated 10.11.2016 was apparently not in the knowledge of the learned trial Court as, in the order dated 07.12.2016 the learned trial Court had duly noted that vide order dated 10.11.2016 passed in CRM-M-38465-2016, this Court had stayed further proceedings. Thereafter, the learned trial Court had duly adjourned the matter; and the case remained as such for almost 1½ years till the dismissal of the aforesaid petition vide order dated 09.10.2018 (Annexure P-5). It is further submitted that there is delay of 628 days in filing the present petition and no cogent or plausible reason has been given by the petitioner seeking condonation of such an inordinate delay.

10. Learned counsel for the State further contends that out of total 21 prosecution witnesses, 11 have already been examined and, therefore, if the present petition is allowed at this belated stage, the entire exercise undertaken by the learned trial Court would be rendered futile. Moreover, the petitioner can have no grievance against the impugned



order as the same was passed in the presence of learned counsel for both the parties.

11. Learned Senior counsel for the petitioner, counters submission of the State Counsel regarding delay of 628 days in filing the present petition by submitting that the petition CRM-M-38465-2016 seeking quashing of the present FIR was dismissed by this Court on 9.10.2018 (at page 38 of the paper book); and the present petition was filed immediately thereafter on 15.10.2018. It is stated that accordingly, the delay was occasioned on account of the fact, that the petitioner was pursuing his quashing petition.

12. No other argument is raised on behalf of the parties.

13. I have heard learned counsel for the parties and perused the case file in detail.

14. Perusal of the impugned order dated 17.11.2016 clearly indicates that the same has been passed during the subsistence of the stay granted by this Court vide order dated 10.11.2016, passed in CRM-M-38465-2016. Without doubt too, the petitioner has a right to be heard at the time of framing of charges and the above assertions made by learned Senior Counsel for the petitioner, have also to be taken into account and considered by the learned trial Court before charges could have been framed as the same have a direct bearing on the matter and are necessary for proper adjudication of the matter.

15. Accordingly, keeping in view the entirety of facts and circumstances of the present case, the impugned order dated 17.11.2016 passed by the learned trial Court framing charges against the petitioner is



set aside; and the matter is remanded back to learned trial Court for re-hearing on the matter of charge.

16. Pending application(s) if any also stand(s) disposed of.

24 .05.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No